THE HON'BLE SRI JUSTICE C.V. RAMULU

Wednesday, 21st day of February,2007

W.P.No.16887 of 1997

Between:-

B. Shiva Shankar … Petitioner

and

Divisional Security Commissioner,
Railway Protection Force,
South Central Railway,
Secunderabad and others … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.16887 of 1997

ORDER:

This Writ Petition is filed seeking a Mandamus declaring the action of the 1st respondent in dismissing the petitioner from service vide Proceedings No.X/SC.227/153/895 (Divisional Order No.168/95), dated 26-9-1995 as confirmed by the 2nd respondent vide Proceedings No.X/P.227/Appeal-95-39 (Force Order No.77/96), dated 26-4-1996 as further confirmed by the 3rd respondent vide Proceedings No.X/P.227/Appeal-95/39 Mercy Petition (Force Order No.180/96), dated 10-10-1996 as arbitrary and illegal and consequently to direct the respondents to reinstate the petitioner into service with all consequential benefits.

It appears, petitioner was appointed as a Constable in Railway Protection Force with effect from 2-7-1988. While so, in the first week of October,1994, he fell sick and took treatment from a private Doctor instead of Railway Hospital, where no proper precautions are being taken. He had taken treatment from a Specialized Doctor for Jaundice from 27-2-1995 to 26-3-1995 and this period was treated as leave without pay by the 1st respondent. However, one K.P. Purushothama Nair, Assistant Sub-Inspector in order to create problems to him, has recorded that he has deserted duty point on 19-1-1995. As such, the 1st respondent issued a charge sheet on 10-7-1995 on the report of the said A.S.I. stating that he has assaulted the

Sub-Inspector on 19-1-1995. One M.Srinivasulu, I.P.F. was appointed as Enquiry Officer. No documents requisitioned by him were furnished, though they were relied upon by the Department. In spite of submitting objections, the Enquiry Officer has not furnished any documents, except the charge sheet. Further, the Enquiry Officer had not provided reasonable opportunity to defend his case. The Enquiry Officer had marked certain documents without supplying the same to him. The enquiry report was furnished to him on 25-8-1995 and he submitted his explanation for the same on 10-9-1995. Without considering the explanation submitted by him, the 1st respondent had passed the Order of dismissal dated 26-9-1995, which was erroneously confirmed by respondents 2 and 3. Therefore, this Writ Petition.

A detailed counter affidavit has been filed on behalf of the respondents denying the allegations made by the petitioner and asserting that the petitioner was supplied with all documents. On 19-1-1995, while the Assistant Sub-Inspector, Balharshah checking his staff, the petitioner was not found on duty at the duty point and on contacting the other Constable, namely, K. Ankamma, he was informed that the petitioner left his duty point without any intimation. Therefore, the A.S.I. had endorsed the same in the seal checking book and also daily diary vide entry No.17 at 13.45 hours of Balharshah Railway Protection Force/Outpost. Petitioner, on knowing about the surprise checking by the A.S.I., went to the Railway Protection Force Outpost Office and threatened the A.S.I. with dire consequences and also used unparliamentary language. All these have been witnessed by another Constable, who was present at that time. Petitioner went to the extent of closing the door of R.P.F. Office to manhandle the A.S.I., apart from threatening to kill him and his family members. All these

facts are evident from the report of the A.S.I. and the statements made by the Constables. Petitioner was given sufficient opportunity by the Enquiry Officer to defend himself. Petitioner never made any complaint as to non-supply of documents or statements of witnesses. If that is so, he would have objected while marking the documents Exs.P1 to P22. Instead of that, the petitioner had cross-examined the witnesses of the Department, which goes to show that he was in possession of all the documents and statements. Therefore, it is false to say that the petitioner has not been afforded any opportunity to defend himself and the enquiry conducted is not valid under the law. The order of dismissal passed by 1st respondent as confirmed by respondents 2 and 3 does not suffer from any infirmity, requiring interference of this Court.

Learned counsel for the petitioner strenuously contended that if really the petitioner has threatened the A.S.I. – K.V. Purushotham Nair while on duty on 19-1-1995, nothing prevented the Department from taking criminal proceedings against the petitioner. No such criminal proceedings were taken out. Ravindran, Constable, who is said to be a witness to the alleged incident, does not understand Telugu and he had simply supported Puruthotham Nair being a subordinate and the details of the language used etc., does not find place anywhere in any documents. Further, transporting of illicit liquor from Balharshah to Bellampalli and involvement of Gaddam Narayana is nothing to do with the petitioner. Petitioner was never cited as one of the accused in the criminal case. The alleged crime arose outside employment and even otherwise, the petitioner was not an accused; therefore, the question of enquiring into something, which is irrelevant for the Department, does not arise. As such, the charge that the petitioner threatened the A.S.I. was not proved and even the transportation of

illegal liquor has nothing to do with the petitioner. Insofar as his absence from 27-2-1995 to 26-3-1995 was concerned, it was already regulated by treating the said period as leave without pay. Therefore, the punishment of dismissal from service is illegal. Assuming that there is something against the petitioner, the punishment of dismissal from service is shockingly disproportionate to that of the misconduct alleged against him.

Learned standing counsel for the respondents strenuously contended that the charges framed against the petitioner are very serious in nature. Petitioner belongs to a disciplined force; therefore, strict discipline has to be observed by him. If such people are let-off, it would send wrong signals. As such, the action taken by the 1st respondent in dismissing the petitioner from service, which is further confirmed by respondents 2 and 3 can neither be said to be arbitrary nor illegal nor the punishment is shockingly disproportionate to that of the misconduct proved against the petitioner.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the Order passed by the 1st respondent as well as the Orders of respondents 2 and 3 and other material made available on record.

Before going into the merits, it may be necessary to notice the charges framed against the petitioner, which read as under:

1. While working at BPQ OP, involved in smuggling of liquor from BPQ to BPA and KZJ area directly or through some agents Sri Gaddam Narayana, S/o Gattaiah, resident of Varadannapet, Warangal, when caught by GRP/KZJ with 10 full B.P. Liquor bottles at KZJ Station. On 27-5-95, confessed that he was engaged by Of the Constitution of India366 for smuggling of liquor by Navajeevan Express. Thus, he violated Rule 3(iii) of Railway Service Conduct Rules,1966.
2. He has misbehaved with ASIPF Sri K.V. Purushotham Nair of BPQ OP on 19-1-95 and used unparliamentary language and he also deserted seal checking duty point.

3. He absented from duty from 8-10-94 to 19-10-94 and from 3-3-95 to 27-3-95. Though this absent period was regularized as LWP, he was warned to be disciplined in future failing which action would be taken under DAR. Thus, despite the warning, he did not improve his conduct.

The first charge deals with smuggling of liquor from Balharshah to Bellampalli and Kazipet through some agents i.e. Gaddam Narayana and others. During that period, of course, there was a prohibition in the State of Andhra Pradesh. If the petitioner was really involved, he could have been made one of the accused in the crime registered against the said Narayana or any overt acts are attributed to him. In fact, there was no complaint before the authority for forming the basis for taking up such an enquiry at all as the alleged incident arose outside the employment. Secondly, insofar as misbehaviour complained against A.S.I. – K.V.Purushotham Nair - was concerned, except Ravindran, Constable, nobody spoke anything about the incident. Even according to Ravindran, after the night duty, he was taking rest and when he heard the shouting, came out and found that the petitioner raised his voice against Purushotham Nair. Except this, no details were spoken to by Ravindran, particularly, as to what exactly the language used by the petitioner etc. Further, the third charge says that the petitioner's absence from duty from 8-10-1994 to 19-10-1994 and from 3-3-1995 to 27-3-1995 was regularized as leave without pay; however, he was warned to be disciplined in future; failing which, action would be taken under DAR and thus, despite the warning, he did not improve his conduct. This appears to be very surprising. The charge itself says that the period of absence from duty from 8-10-1994 to 19-10-1994 and from 3-3-1995 to 27-3-1995 was regularized. Therefore, there was no necessity to conduct any enquiry into such matter. May be, there is some hearsay evidence insofar as

the second charge is concerned i.e. as to using of some unparliamentary language against Purushotham Nair, ASI. But, the allegations of transportation of liquor from Balarshah to Bellampalli and Kazipet illegally and regularizing of absence period could not have been formed part of enquiry. As such, I am of the opinion that assuming that there is some charge against the petitioner, the punishment of removal from service is shockingly disproportionate to that of the misconduct alleged against the petitioner.

Generally speaking, if the Court finds that the punishment is disproportionate, the matter needs to be remitted back to the authority concerned. However, admittedly, in this case, the petitioner was appointed on 2-7-1988 and was removed from service on 26-9-1995; thus, he had put in seven years of service by that time and it is not the case of the respondents that the petitioner involved in any other such misconduct earlier. Now, it is about 12 years since the petitioner was dismissed from service and the Writ Petition is pending for the last about 10 years, I deem it appropriate to give a quietus to this *lis* at this stage. The ends of justice would be met, if the petitioner is reinstated with continuity of service, but without any back wages and without any attendant benefits.

In the result, the order of dismissal from service dated 26-9-1995 passed by the 1st respondent as confirmed by respondents 2 and 3 is modified and respondents are directed to reinstate the petitioner with continuity of service, but without any back wages and without any attendant benefits.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

21-02-2007

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